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6 NETFLIX, INC.

7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

10 NETFLIX, INC., a Delaware corporation,

11 Plaintiff,

12 v.

13 BLOCKBUSTER, INC., a Delaware
corporation, DOES 1-50,

14 Defendant.
15

Case No. C 06 2361 WHA

**PLAINTIFF NETFLIX'S NOTICE OF MOTION
AND MOTION UNDER CIVIL L.R. 7-11 FOR
RELIEF FROM APRIL 12, 2007 DISCOVERY
MOTION DEADLINE**

Date: N/A per Civil L.R. 7-11
Judge: Hon. William Alsup

Notice of Motion and Motion

PLEASE TAKE NOTICE that Plaintiff Netflix, Inc. (“Netflix”) hereby moves under Civil L.R. 7-11 for relief from the Court’s Case Management Order for the purpose of seeking leave to file discovery motions beyond the 45 day cutoff contained in Paragraph 20 of the Court’s Case Management Order, as modified by the Court’s Order of March 12, 2007.

This Motion is based on this Notice of Motion and Motion; the below Declaration in support thereof; all pleadings and papers filed herein; oral argument of counsel if a hearing is required by the Court; and any other materials that may be submitted at the hearing.

Declaration in Support of Motion

1. On June 30, 2006, this Court issued its Case Management Order (“Order”) providing that the “deadline for bringing all discovery motions or extension motions based on discovery violations will be **45 CALENDAR DAYS** prior to the fact discovery cutoff (for fact discovery).” Order at 6 (¶ 20). Because fact discovery is scheduled to cut off on April 27, 2007, that deadline was March 13, 2007.
2. On March 9, 2007, following a hearing before the Honorable Joseph C. Spero, and at Judge Spero’s suggestion, Netflix moved the Court for an order extending its time to file discovery motions in this case for a period of 30 days, to and including April 12, 2007. The Court granted Netflix’s motion in an Order dated March 12, 2007.
3. Since that time, counsel for Netflix and counsel for Blockbuster have engaged in weekly conference calls with Judge Spero to discuss the progress Blockbuster has made in producing any responsive documents that are able to be produced.
4. In the course of these discussions, Blockbuster has indicated that it believes its production will be substantially complete, save for documents that may need review or redaction for privilege, on or around April 9, which is three days prior to the current deadline for Netflix to file any appropriate discovery motions.
5. Netflix has also requested a Rule 30(b)(6) deposition of Blockbuster on issues relating to its retention and collection of documents. Blockbuster has indicated that it will make a witness available on those topics on April 10, which is two days prior to the current

1 deadline for Netflix to file any appropriate discovery motions.

2 6. In order properly to assess whether any discovery motion is appropriate, and if so, the
3 basis for any such motion and the relief requested in any such motion, Netflix will need
4 to evaluate the evidence that will be obtained from Blockbuster through the productions
5 that it continues to make through and possibly beyond April 9, as well as the testimony
6 obtained from Blockbuster's Rule 30(b)(6) deponent on April 10.

7 7. Blockbuster has informed Netflix that it is willing to stipulate to a request to extend
8 Netflix's current deadline to bring discovery motions for one week, to and including
9 April 19, 2007.

10 8. Counsel for Netflix therefore respectfully makes this administrative motion requesting
11 that the Court extend Netflix's deadline to file discovery motions for one week beyond
12 the April 12, 2007 cutoff date contained in the Court's Order of March 12, 2007, which
13 modified the deadline contained in its Case Management Order, to and including April
14 19, 2007.

15
16 I declare under penalty of perjury that the foregoing is true and correct, and that it was executed
17 on April 2, 2007 in San Francisco, California.

18 _____
19 /s/
Eugene M. Paige

20 Dated: April 2, 2007

Respectfully submitted,
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22 KEKER & VAN NEST, LLP

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24 By: /s/ Eugene M. Paige
Eugene M. Paige
25 Attorneys For Plaintiff NETFLIX, INC.
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